

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

EDWARD RABB NELL
2603 South Park Lane
Santa Clara, CA 95051
Optometrist License No. 6522

Respondent.

Case No. CC-2008-116

OAH No. N2010080852

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the State Board of Optometry, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on February 18, 2011.

It is so ORDERED January 19, 2011.



FOR THE STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 CHAR SACHSON
Deputy Attorney General
4 State Bar No. 161032
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5558
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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8 **BEFORE THE**
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. CC-2008-116

11 **EDWARD RABB NELL**
12 **2603 South Park Lane**
13 **Santa Clara, CA 95051**

OAH No. N2010080852

14 **Optometrist License No. 6522**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 Respondent.

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17 In the interest of a prompt and speedy settlement of this matter, consistent with the public
18 interest and the responsibility of the State Board of Optometry of the Department of Consumer
19 Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order
20 which will be submitted to the Board for approval and adoption as the final disposition of the
21 Accusation.

22 **PARTIES**

23 1. Mona Maggio (Complainant) is the Executive Officer of the State Board of
24 Optometry. She brought this action solely in her official capacity and is represented in this matter
25 by Edmund G. Brown Jr., Attorney General of the State of California, by Char Sachson, Deputy
26 Attorney General.

27 2. Respondent Edward Rabb Nell (Respondent) is representing himself in this
28 proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about September 22, 1978, the State Board of Optometry issued Optometrist License No. 6522 to Respondent. The Optometrist License was in full force and effect at all times relevant to the charges brought in Accusation No. CC-2008-116 and will expire on March 31, 2012, unless renewed.

JURISDICTION

4. Accusation No. CC-2008-116 was filed before the State Board of Optometry (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 13, 2010. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. CC-2008-116 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. CC-2008-116. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. CC-2008-116.

9. Respondent agrees that his Optometrist License is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

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CIRCUMSTANCES IN MITIGATION

10. Respondent Edward Rabb Nell has never been the subject of any disciplinary action. He is admitting responsibility at an early stage in the proceedings.

CONTINGENCY

11. This stipulation shall be subject to approval by the State Board of Optometry. Respondent understands and agrees that counsel for Complainant and the staff of the State Board of Optometry may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Optometrist License No. 6522 issued to Respondent Edward Rabb Nell is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. **Obey All Laws.** Respondent shall obey all federal, state and local laws, and all rules governing the practice of optometry in California.

2. **Cooperate with Probation Surveillance.** Respondent shall comply with the board's probation surveillance program; including but not limited to allowing access to the probationer's optometric practice(s) and patient records upon request of the board or its agent.

3. **Tolling of Probation If Respondent Moves Out-of-State.** The period of probation shall not run during the time Respondent is residing or practicing outside the jurisdiction of California. If, during probation, Respondent moves out of the jurisdiction of California to reside or practice elsewhere, Respondent is required to immediately notify the board in writing of the date of departure, and the date of return, if any.

4. **Completion of Probation.** Upon successful completion of probation, Respondent's certificate will be fully restored.

5. **Violation of Probation.** If Respondent violates probation in any respect, the board, after giving Respondent notice and opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against Respondent during probation, the board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

6. **Drugs - Abstain From Use.** Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined by Section 4211 of the Business and Professions Code or any drugs requiring a prescription.

7. **Drugs - Exception for Personal Illness.** Orders forbidding Respondent from personal use or possession of controlled substances or dangerous drugs do not apply to medications lawfully prescribed to Respondent for a bona fide illness or condition by a licensed

1 physician.

2 8. **Lens Prescriptions - Maintain Records.** Respondent shall maintain a record of all
3 lens prescriptions dispensed or administered by Respondent during probation, showing all the
4 following: 1) the name and address of the patient, 2) the date, 3) the price of the services and
5 goods involved in the prescription, and 4) the visual impairment identified for which the
6 prescription was furnished.

7 Respondent shall keep these records in a separate file or ledger, in chronological order, and
8 shall make them available for inspection and copying by the board or its designee, upon request.

9 9. **Alcohol - Abstain From Use.** Respondent shall abstain completely from the use of
10 alcoholic beverages.

11 10. **Biological Fluid Testing.** Respondent shall immediately submit to biological fluid
12 testing, at Respondent's cost, upon the request of the board or its designee.

13 11. **Community Services - Free Services.** Within 60 days of the effective date of this
14 decision, Respondent shall submit to the board for its prior approval a community service
15 program in which Respondent shall provide free non-optometric services on a regular basis to a
16 community or charitable facility or agency for at least twenty (20) hours a month for the first
17 twelve (12) months of probation.

18 12. **Education Course.** Within 90 days of the effective date of this decision, Respondent
19 shall submit to the board for its prior approval an educational program or course(s) to be
20 designated by the board, which shall not be less than 40 hours, and shall be in the areas of alcohol
21 and substance abuse. The coursework shall be completed within 24 months of the effective date
22 of this decision. This program shall be in addition to the Continuing Optometric Education
23 requirements for re-licensure, and shall be obtained with all costs being paid by Respondent.
24 Following the completion of each course, the board or its designee may administer an
25 examination to test Respondent's knowledge of the course. Respondent shall provide written
26 proof of attendance in such course or courses as are approved by the board.

27 13. **Reexamination.** Within 60 days of the effective date of this decision, or within some
28 other time as prescribed in writing by the board, Respondent shall take and pass the California

1 Laws and Regulations Examination (CLRE) administered by Psychological Services, LLC PSI.
2 If Respondent fails this examination, Respondent must re-take and pass the examination. The
3 waiting period between repeat examinations shall be at six month intervals until success is
4 achieved. The Respondent shall pay the cost of any such examination.

5 If Respondent fails the first examination, Respondent shall cease the practice of optometry
6 until the re-examination has been successfully passed, as evidenced by written notice to
7 Respondent from the board. Failure to pass the required examination no later than 100 days prior
8 to the termination date of probation shall constitute a violation of probation.

9 14. **Psychiatric or Psychological Evaluation.** Within 30 days of the effective date of
10 this decision, and on a periodic basis thereafter as may be required by the board or its designee,
11 Respondent shall undergo a psychiatric or psychological evaluation (and psychological testing, if
12 deemed necessary) by a board-appointed psychiatrist or psychologist, at Respondent's cost, who
13 shall furnish a psychiatric or psychological report to the board or its designee.

14 If Respondent is required by the board or its designee to undergo psychiatric or
15 psychological treatment, Respondent shall within 30 days of the requirement notice submit to the
16 board for its prior approval the name and qualifications of a psychiatrist or psychologist of
17 Respondent's choice. Upon approval of the treating psychiatrist or psychologist, Respondent shall
18 undergo and continue psychiatric or psychological treatment, at Respondent's cost, until further
19 notice from the board. Respondent shall have the treating psychiatrist or psychologist submit
20 quarterly status reports to the board.

21 15. **Psychotherapy.** Within 60 days of the effective date of this decision, Respondent
22 shall submit to the board for its prior approval the name and qualifications of a psychotherapist of
23 Respondent's choice. Upon approval, Respondent shall undergo and continue treatment, at
24 Respondent's cost, until the board deems that no further psychotherapy is necessary. Respondent
25 shall have the treating psychotherapist submit quarterly status reports to the board. The board may
26 require Respondent to undergo psychiatric or psychological evaluations by a board-appointed
27 psychiatrist or psychologist. Respondent shall be allowed to continue psychotherapy with his
28 current treating provider as long as the treating psychotherapist agrees to submit quarterly status

1 reports to the Board.

2 16. **Monitoring.** Within 30 days of the effective date of this decision, Respondent shall
3 submit to the board for its prior approval a plan of practice in which Respondent's practice shall
4 be monitored by another optometrist, who shall provide periodic reports to the board. Any cost
5 for such monitoring shall be paid by Respondent.

6 17. **Drug, Alcohol, or Other Chemical Abuse Counseling and Treatment.** Within 15
7 days of the effective date of this decision, Respondent shall submit to the Board the name,
8 business address, business telephone number and name of the director(s) or chief of staff of any
9 and all Chemical Abuse Counseling and Treatment Programs he has successfully completed. The
10 Board may consider completion of said programs as meeting this requirement. However, if the
11 Board deems Respondent must participate in additional programs, Respondent shall be required
12 to submit to the Board the name, business address, and business telephone number of three
13 persons who are professionally qualified to provide counseling and treatment for drug, alcohol or
14 other chemical abuse appropriate to the case. Thereafter the board through its staff shall select
15 one of these persons to provide the necessary counseling and treatment. Within 30 days of written
16 notification of this selection to the Respondent the Respondent shall, in consultation with this
17 counselor and treating professional, prepare and submit to the board for its approval, a counseling
18 and treatment program all costs of which shall be paid by the Respondent. Respondent shall
19 successfully complete this counseling and treatment program as a condition of probation.

20
21 ACCEPTANCE

22 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
23 stipulation and the effect it will have on my Optometrist License. I enter into this Stipulated
24 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
25 bound by the Decision and Order of the State Board of Optometry.

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27 DATED: 11.15.2010

Edward Rabb Nell
EDWARD RABB NELL
Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the State Board of Optometry of the Department of Consumer Affairs.

Dated: 12/8/10

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General



CHAR SACHSON
Deputy Attorney General
Attorneys for Complainant

SF2010201431
Stipulation.rtf

Exhibit A

Accusation No. CC-2008-116

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 CHAR SACHSON
Deputy Attorney General
4 State Bar No. 161032
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5558
6 Facsimile: (415) 703-5480
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10 **STATE OF CALIFORNIA**

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12 **EDWARD RABB NELL**
13 **2603 South Drive**
Santa Clara, CA 95051

A C C U S A T I O N

14 **Optometrist License No. 6522**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Mona Maggio (Complainant) brings this Accusation solely in her official capacity as
20 the Executive Officer of the State Board of Optometry, Department of Consumer Affairs.

21 2. On or about September 11, 1978, the State Board of Optometry issued Optometrist
22 License Number 6522 to Edward Rabb Nell (Respondent). The Optometrist License was in full
23 force and effect at all times relevant to the charges brought herein and will expire on March 31,
24 2012, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the State Board of Optometry (Board), Department
27 of Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code unless otherwise indicated.

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1 "(b) Any violation of the provisions of Article 6, Chapter 1, Division 2 of the Code
2 (Sections 650 et. seq. of the Code) except Sections 651.4 and 654.

3 "(c) Any violation of the provisions of Chapter 5.4, Division 2 of the Code (Sections 2540
4 et seq. of the Code).

5 "(d) Any violation of the provisions of Chapter 7, Division 2 of the Code (Sections 3000 et
6 seq. of the Code)."

7 6. Section 490 of the Code provides, in pertinent part, that a board may suspend or
8 revoke a license on the ground that the licensee has been convicted of a crime substantially
9 related to the qualifications, functions, or duties of the business or profession for which the
10 license was issued.

11 7. Section 118, subdivision (b), of the Code provides that the expiration of a license
12 shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period
13 within which the license may be renewed, restored, reissued or reinstated.

14 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
15 administrative law judge to direct a licentiate found to have committed a violation or violations of
16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
17 enforcement of the case.

18
19 FIRST CAUSE FOR DISCIPLINE
20 (CRIMINAL CONVICTIONS)

21 9. Respondent is subject to disciplinary action under sections 490 and/or 3110(k) in that
22 on or about April 16, 2009, in a criminal proceeding entitled *People v. Edward Rabb Nell*, in
23 Santa Clara County Superior Court, Case No. CC930791 Respondent pled guilty to violating
24 Vehicle Code section 23152(b) (driving with blood alcohol of over .08%). Respondent was
25 sentenced to serve 15 days in jail, three years court probation, ordered to enroll in a first offender
26 program and to pay fines and fees in the amount of \$665.00. The circumstances of the conviction
27 are that on or about December 17, 2008, Respondent was arrested for driving under the influence
28 of alcohol after being seen filling his car with gasoline while apparently intoxicated at a Chevron

1 station located at 200 Los Gatos Saratoga Road, Los Gatos, California. Respondent's blood
2 alcohol level was .29%.

3 10. Respondent is further subject to disciplinary action under sections 490 and/or 3110(k)
4 in that on or about January 13, 2010, in a criminal proceeding entitled *People v. Edward Rabb*
5 *Nell*, in San Mateo County Superior Court, Case No. SM363900A Respondent pled nolo
6 contendere to violating Vehicle Code section 23152(a) (driving while under the influence of
7 alcohol). Respondent was sentenced to serve six months in jail (or residential rehabilitation
8 center), probation for three years, to complete a residential treatment program, complete a
9 multiple offender program, and to pay fines and fees as ordered by the court's probation
10 department. The circumstances of the conviction are that on or about May 1, 2009, Respondent
11 was arrested for driving under the influence of alcohol on the grounds of the Veterans'
12 Administration hospital in Palo Alto, California.

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14 SECOND CAUSE FOR DISCIPLINE

15 (USING ALCOHOL IN A MANNER DANGEROUS TO ONESELF OR OTHERS)

16 11. Respondent is subject to disciplinary action under section 3110(l) in that he
17 administered alcohol to himself in a manner dangerous to himself or others, as alleged above in
18 paragraphs 9 and 10.

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20 MATTERS IN AGGRAVATION

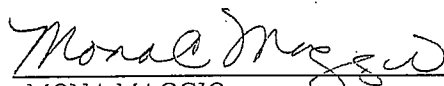
21 12. As relevant to penalty, if any, Complainant alleges that on or about June 15,
22 2000, in a criminal proceeding entitled *People v. Edward Rabb Nell*, in Santa Cruz County
23 Superior Court, Docket No. W901090, Respondent was convicted of violating Vehicle Code
24 section 23152 (driving while under the influence of alcohol).

25
26 PRAYER

27 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
28 and that following the hearing, the State Board of Optometry issue a decision:

- 1 1. Revoking or suspending Optometrist License Number 6522, issued to Edward Rabb
2 Nell;
3 2. Ordering Edward Rabb Nell to pay the State Board of Optometry the reasonable costs
4 of the investigation and enforcement of this case, pursuant to Business and Professions Code
5 section 125.3;
6 3. Taking such other and further action as deemed necessary and proper.

9
10 DATED: August 11, 2010



MONA MAGGIO
Executive Officer
State Board of Optometry
Department of Consumer Affairs
State of California
Complainant

14 SF2010201431